

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

IN THE MATTER OF REMEDIAL ACTION AT  
THE BOZEMAN SOLVENT SITE, A CECRA  
FACILITY.

ADMINISTRATIVE ORDER  
ON  
CONSENT

Docket No. SF-11-0003

I - JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("AOC") is entered into between the City of Bozeman ("City"), CVS Pharmacy, Inc. ("CVS"), and the Montana Department of Environmental Quality ("DEQ") pursuant to § 75-10-723, MCA. This AOC requires the City and CVS (collectively "the Respondents") to perform the remedial actions identified in the August 18, 2011 Record of Decision ("ROD") issued by DEQ for the Bozeman Solvent Site ("Facility").

2. DEQ and the Respondents agree that this AOC has been negotiated in good faith and that the actions undertaken by the Respondents in accordance with this AOC do not constitute an admission of any liability. The Respondents do not admit, and retain the right to controvert in any subsequent proceedings, the validity of the findings of fact, conclusions of law, and determinations in this AOC. The Respondents agree that all obligations, commitments, and other agreements in this AOC are made both individually and jointly. The Respondents agree to comply with, and be bound by, the terms of this AOC and further agree that they will not seek judicial review regarding the jurisdiction (or the facts that constitute jurisdiction) of this AOC. The Respondents further agree that they will not seek judicial review of the issuance of the ROD

or AOC or remedy selected in the ROD; provided, however, that Respondents reserve the right to seek judicial review of the implementation of the AOC, including the Work Plan, Work, Schedule, Deliverable, or DEQ Remedial Action Costs, as provided for in Section XVI (Dispute Resolution).

3. The Record of Decision is hereby incorporated into this AOC as Attachment A.

## II - PARTIES BOUND

4. This Order applies to and is binding upon DEQ, the Respondents, and their successors and assigns. Any change in ownership or corporate status of CVS including, but not limited to, any transfer of CVS' assets or real or personal property shall not alter CVS' status or responsibilities under this AOC unless transferred pursuant to Paragraph 6 below.

5. The Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this AOC and shall make a good faith effort to ensure that the contractors, subcontractors, and representatives comply with this AOC. The Respondents shall be responsible for any action on their behalf or at their direction resulting in noncompliance with this AOC.

6. The Respondents shall not assign, transfer, convey, sublet or otherwise dispose of any legal obligation, requirement, right, title or interest contained within this AOC without the previous written consent of DEQ which shall not be unreasonably withheld. Any attempts to assign, transfer, convey, sublet or otherwise dispose of any requirement of this AOC without DEQ's prior written consent are null and void.

## III - DEFINITIONS

7. Terms used in this AOC are to be taken and understood in their natural and ordinary sense unless this AOC indicates that a different meaning was intended. Unless otherwise expressly provided herein, terms used in this AOC that are defined in CECRA shall

have the meaning assigned to them in CECRA. Whenever terms listed below are used in this AOC, in the documents attached to this AOC, or incorporated by reference into this AOC, the following definitions shall apply:

- a. "AOC" means this document together with Attachment A (Record of Decision) and any subsequent modifications and amendments.
- b. "Approved" when used in conjunction with this AOC, means reviewed by DEQ (and if appropriate, modified), and finally agreed to and Approved by DEQ in writing.
- c. "CECRA" means the Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701, et seq., MCA.
- d. "Contractor" means the individual(s), company, or companies retained by or on behalf of the Respondents to undertake and complete all or a part of the Work. A Contractor and any subcontractors retained by the Contractor shall be deemed to be related by contract to the Respondents.
- e. "Day" means a calendar day, unless a business day is specified. In computing any period of time under this AOC, where the last day would fall on a Saturday, Sunday, or State of Montana holiday, the period shall run until the close of business of the next working day.
- f. "Deliverable" means any written document, including but not limited to, work plans, reports, notices, memoranda, data or other documents that Respondents must submit to DEQ under the terms of this AOC.
- g. "DEQ" means the Montana Department of Environmental Quality and any successor departments or agencies of the State of Montana.

- h. “DEQ-7” means the August 2010 version of the Montana Numeric Water Quality Standards for Montana’s surface and groundwater adopted pursuant to the Montana Water Quality Act, § 75-5-301, MCA.
- i. “DEQ Remedial Action Costs” shall mean all costs as defined by § 75-10-701(23), MCA, incurred by the State of Montana which are attributable to or associated with a remedial action at the Facility including, but not limited to, direct and indirect reasonable costs that DEQ and the State of Montana incur in overseeing work at the Facility, developing the ROD, drafting, negotiating and executing this AOC, and all direct and indirect reasonable costs that DEQ will incur in reviewing or developing Deliverables submitted pursuant to this AOC, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this AOC, including, but not limited to, reasonable payroll costs, contractor costs, travel costs, attorney’s fees, litigation costs, laboratory costs, and all Interest due under § 75-10-722, MCA.
- j. “Effective Date” means the effective date of this AOC as provided in Section XXXII (Effective Date).
- k. “Facility” means the site commonly known as the Bozeman Solvent Site located in Bozeman, Montana where hazardous or deleterious substances originating from the former dry cleaning operation located at the former Buttery Shopping Center, now known as the Hastings Shopping Center (BSC), have come to be located and is more particularly described in the ROD.
- l. “Force majeure” means any event arising from causes beyond the control of the Respondents, or of any entity controlled by or associated with the Respondents,

including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this AOC despite Respondents' best efforts to fulfill the obligation. The requirement that the Respondents use "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure events might include delays or failures of governmental agencies in issuing necessary permits or approvals, provided that the Respondents have timely submitted complete applications and provided all requested information. Force majeure does not include financial inability to complete the Work, increased cost of performance, or normal precipitation events.

- m. "Institutional Controls" means those restrictions on the use of real property that mitigates the risk posed to public health, safety, and welfare which are more particularly described in the ROD
- n. "Party" means the City, CVS, or DEQ. "Parties" means the Respondents and DEQ.
- o. "Remedial Action" means all activities the Respondents are required to perform under this AOC to implement the ROD, including but not limited to development of Deliverables, implementation of Work, and long-term operation and maintenance, including but not limited to groundwater monitoring.
- p. "Respondents" means the City of Bozeman and CVS Pharmacy Inc. The term includes CVS' successors and assigns. It also includes the City of Bozeman.

- q. "ROD" means the Record of Decision issued by DEQ on August 18, 2011.
- r. "Schedule" means the schedule for completion of the Work and all Deliverables, which will be approved by DEQ and incorporated into this AOC.
- s. "Work" means performing the final remedial actions identified in the ROD issued by DEQ at the Bozeman Solvent Site, including long-term operation and maintenance, to be performed by Respondents under this AOC according to the Schedule.
- t. "Work Plan" means a plan for implementing all or a portion of the remedial action at the Facility to be performed by Respondents under this AOC, as well as any approved modifications to a Work Plan, as provided for in Sections XXVI (Modifications) and XXVII (Additional Work).

#### IV - FINDINGS OF FACT

DEQ makes the following findings of fact:

8. The majority of the Facility is within the City limits. The northern-most portion of the Facility is north of the East Gallatin River, outside the city limits (Township 1 South, Range 5 East, Sections 25, 26, 35, and 36 and Township 2 South, Range 5 East, Sections 1 and 12). The surficial and approximate boundaries of the Facility extend from the former Buttrey Shopping Center ("BSC"), now known as the Hastings Shopping Center, (1625 West Main Street) on the south, to approximately 500 feet north of the East Gallatin River. North 19th Avenue is the approximate western boundary of the Facility. The eastern boundary extends from the Hastings Shopping Center to the North 7th Avenue and Interstate 90 (I-90) interchange then north of the East Gallatin River northeast of Cherry Spring.

9. DEQ has listed the Facility as a maximum priority on the CECRA Priority List pursuant to § 75-10-704(3), MCA.

10. In 1989, DEQ conducted a survey of public water supply wells in Montana. During this survey, tetrachloroethene ("PCE") was detected in a public water supply well at the Nelson Mobile Home Park approximately 2,200 feet north of the BSC. The PCE was ultimately traced back to the BSC, which at the time the contamination occurred was connected to a private sewer system.

11. The BSC sewer system consisted of a sewer line, service connections to the various attached businesses, a septic tank, and two seepage pits. A dry cleaner business operated at the BSC from 1960 until 1993 and discharged PCE into the former sewer line.

12. The PCE was released into the subsurface at the BSC through leaks in the former sewer line and former septic system, and contaminated the soil and groundwater. Soil contamination is primarily limited to the saturated soils beneath and adjacent to the former sewer line and the former septic system at the BSC. There are no known contaminated surface soils. PCE has also impacted soil vapor.

13. Groundwater contamination is between 11 and 52 feet deep at the BSC. Groundwater contamination extends from the BSC to the north side of the East Gallatin River, approximately 2.5 miles away.

14. PCE is a hazardous or deleterious substance as that term is defined in § 75-10-701(8), MCA.

15. The Montana groundwater quality standard for PCE is 5 µg/L.

16. There are other hazardous and deleterious substances at the Facility which are described in the ROD.

17. In the ROD, DEQ determined that an imminent and substantial endangerment exists to the public health, safety, or welfare or the environment from the releases and threatened

releases at the Facility and that remedial action is necessary to abate this endangerment. DEQ's ROD identifies how that abatement must occur and includes site-specific cleanup levels for the hazardous or deleterious substances.

18. Respondent CVS is a Rhode Island corporation.

19. Respondent City is a municipal corporation organized under the laws of the State of Montana.

20. Buttrey Foods, Inc. acquired the property upon which the BSC is located on June 10, 1960. On June 16, 1966, Buttrey Foods, Inc. was later merged with Jewel Tea Co., Inc. which changed its name to Jewel Companies, Inc. the same day. In 1984, American Stores Company acquired Jewel Companies, Inc. as a wholly owned subsidiary. Jewel Companies, Inc. owned the BSC until May 3, 1986, when it was transferred to Skaggs Alpha Beta, Inc., which was also a wholly owned subsidiary of American Stores Company.

21. Albertson's Inc. acquired American Stores Company (including Jewel Companies, Inc.) in 1999 and assumed liability for cleanup of the Facility. In 2006, CVS assumed Albertson's liability for the Facility pursuant to CVS' acquisition of the Osco Drug chain.

22. On August 12, 1970, Jewel Companies, Inc. deeded the conveyance piping (sewer line) and manholes of the BSC to the City. The City has since owned and operated the sanitary sewage conveyance piping and manholes that service the BSC.

23. In Interim Order WQ-91-0001 issued October 9, 1991, DEQ determined that Skaggs Alpha Beta and Jewel Companies, Inc. were persons who owned or operated the Facility during the time a hazardous or deleterious substances was disposed or released and were liable under § 75-10-715, MCA.



24. In Interim Water Supply Order WQ-93-101 issued June 14, 1993, DEQ determined that Skaggs Alpha Beta, Inc., Jewel Companies, Inc., and the City were persons who owned or operated the Facility during the time a hazardous or deleterious substances was disposed and were liable under § 75-10-715, MCA.

25. Neither Interim Order WQ-91-0001 nor Interim Water Supply Order WQ-93-101 was appealed and the time for appealing those determinations has expired.

#### V - CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the preceding Findings of Fact, DEQ has made the following Conclusions of Law:

26. Respondent City is a "person" as that term is defined by § 75-10-701(16), MCA.

27. The City is a person who "owns or operates" the Facility as that term is defined by § 75-10-701(15), MCA, and, by owning or operating the Facility, the City is liable for remedial actions pursuant to § 75-10-715, MCA.

28. Respondent CVS is a "person" as that term is defined by § 75-10-701(16), MCA and, having assumed by contract the liability of a person who was previously determined to "own or operate" the Facility as that term is defined by § 75-10-701(15), MCA, is liable for remedial actions pursuant to § 75-10-715, MCA.

29. The real property, all buildings, structures, installations, equipment, pipes or pipelines, wells, impoundments, ditches, landfills, and storage containers is a "Facility" as that term is defined by Paragraph 5(k) above.

30. PCE has contaminated subsurface soil and soil vapor and PCE is present in the groundwater at the Facility above the DEQ-7 standard of 5 µg/L.

31. The PCE at the Facility is a hazardous or deleterious substance as that term is defined in § 75-10-701(8), MCA.

32. There are other hazardous and deleterious substances, as that term is defined in § 75-10-701(8), MCA, at the Facility which are described in the ROD.

33. In the ROD, DEQ determined that an imminent and substantial endangerment exists to the public health, safety, or welfare or the environment from the releases and threatened releases at the Facility and that remedial action is necessary to abate this endangerment. The ROD identifies how that abatement must occur and includes site-specific cleanup levels for the hazardous or deleterious substances.

34. Based on the Findings of Fact and Conclusions of Law set forth above, as provided for in § 75-10-723, MCA, DEQ has determined that it is practicable and in the public interest to enter into this AOC requiring Respondents to perform the Work as defined herein. DEQ also has determined that the Respondents will perform the Work properly and has included in this AOC terms and conditions that DEQ has determined to be appropriate.

35. Based on the Findings of Fact and Conclusions of Law set forth above, DEQ has determined that the actions required by and undertaken pursuant to this AOC are necessary to protect the public health, safety, and welfare and the environment, are in the public interest, are consistent with the requirements of CECRA, and are appropriate remedial actions to contain, remove, and abate past releases of hazardous or deleterious substances and presently continuing releases and threatened releases of hazardous or deleterious substances into the environment at and from the Facility.

## VI - ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, and Determinations, DEQ hereby orders that Respondents comply with all provisions of this AOC, including, but not limited to, implementation of the ROD.

## VII - DESIGNATION OF CONTRACTOR AND PROJECT COORDINATORS

36. Respondents have retained ATC Associates, Inc. to perform the Work.

Respondents shall notify DEQ of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 10 Days prior to commencement of such Work.

37. DEQ retains the right to disapprove of any or all of the contractors and/or subcontractors retained by the Respondents, including previously selected contractors, based upon the person's qualifications or ability to effectively perform the required Work. If DEQ disapproves of a contractor selected by the Respondents, DEQ must provide a written disapproval specifically identifying the reason(s) for its disapproval. If DEQ provides written disapproval of a selected contractor, Respondents shall select a different contractor and shall notify DEQ of that contractor's name and qualifications within 30 Days of DEQ's disapproval.

38. The Respondents' Project Coordinator shall be Michael Ellerd of ATC Associates, Inc., as an agent of the Respondents, and he shall be responsible for administration of all actions by Respondents required by this AOC. Respondents have designated James Sullivan of ATC Associates, Inc. as their Alternate Project Coordinator. To the greatest extent possible, the Respondents' Project Coordinator shall be present on Facility or readily available during Work at the Facility. Respondents reserve the right to designate a different Project Coordinator at their sole discretion; provided, however, that DEQ does not disapprove the Respondents' selection of a different Project Coordinator.

39. DEQ retains the right, at any time, to disapprove of the designated Project Coordinator or Alternate Project Coordinator based upon the person's qualifications or ability to effectively perform the required Work. If DEQ disapproves of the designated Project Coordinator or Alternate Project Coordinator selected by the Respondents, DEQ must provide a

written disapproval specifically identifying the reason(s) for its disapproval. If DEQ disapproves of the designated Project Coordinator or Alternate Project Coordinator, Respondents shall select a different Project Coordinator and shall notify DEQ of that person's name, address, telephone number, and qualifications within 30 Days following DEQ's disapproval.

40. Receipt by Respondents' Project Coordinator of any notice or communication from DEQ relating to this AOC shall constitute receipt by Respondents.

41. DEQ has designated Kate Fry as its Project Coordinator. Her telephone number is 406-841-5066 and her email is kfry@mt.gov. DEQ has designated Denise Martin as its Alternate Project Coordinator. Her telephone number is 406-841-5060 and her email is demartin@mt.gov. Except as otherwise provided in this AOC, Respondents shall direct all submissions required by this AOC to DEQ's Project Coordinator or Alternate Project Coordinator, if the Project Coordinator is not available, at:

Montana Department of Environmental Quality  
1100 N. Last Chance Gulch  
P.O. Box 200901  
Helena, MT 59620-0901

42. DEQ and Respondents (subject to Paragraphs 37 and 39) shall have the right to change their respective designated Project Coordinators. Respondents and DEQ shall notify the other Party at least 10 Days before such a change is made. The initial notification may be made orally, but shall be followed by a written notice within 10 Days.

#### VIII - WORK TO BE PERFORMED

43. Respondents shall conduct all remedial actions necessary to implement the ROD. This Work shall be conducted in accordance with this AOC and all applicable federal, state and local laws and regulations.

44. At the direction of DEQ, Respondents shall prepare Work Plans to implement the ROD and all Work shall be conducted according to a Schedule. DEQ may require changes to the Work Plans or Schedule if DEQ determines such changes are necessary to ensure compliance with this AOC. Any such change in the Work Plans or Schedule made by the DEQ shall be provided to the Respondents in writing and with sufficient notice to enable the Respondents to limit additional costs. Any subsequent modifications to a Work Plan or Schedule approved by DEQ shall be incorporated into and become fully enforceable under this AOC.

45. All Deliverables from Respondents must be submitted to DEQ concurrently in both hard copy and modifiable electronic format.

46. Changes to the Deliverables submitted by Respondents may be needed to ensure adequate compliance with this AOC and the ROD. When DEQ comments on and/or directs the Respondents to make changes to Deliverables, the following procedures shall apply:

- A. Respondents will have 14 Days from the Day of receipt of DEQ's comments to incorporate all comments or changes to the Deliverable required by DEQ and agreed to by Respondents, unless a different time period is specified by DEQ or requested by Respondents and approved, in writing, by DEQ.
- B. In the event Respondents do not agree with DEQ's comments or directed changes to a Deliverable, DEQ shall meet with Respondents to discuss the comments. Such request for a meeting must be made by Respondents in writing within seven Days of receipt of DEQ's comments. If the request is not made within this timeframe, Respondents will be deemed to have waived their right to a meeting. Respondents and DEQ shall make a good faith effort to meet within 14 Days of Respondents' request for a meeting. If DEQ deems Respondents, after timely

requesting a meeting, have not made a good faith effort to meet within the 14 Day period, DEQ may, in writing, provide notice that Respondents' right to a meeting has been deemed waived. If DEQ agrees that any of its comments or directed changes should be modified based upon the meeting between DEQ and Respondents, DEQ shall document that decision by sending a letter modifying its comments or directed changes within 10 Days after the meeting. Respondents must then resubmit the Deliverable in accordance with DEQ's direction.

- C. If DEQ determines that Respondents have not adequately incorporated DEQ's comments or directed changes, DEQ may make the required changes to the Deliverable by incorporating its required revisions electronically into the document and either finalizing the document itself or providing an opportunity for the Respondents to finalize the document with DEQ's revisions. If DEQ finalizes the document, upon request of Respondents, DEQ will remove from the final version of the document the name of the author who prepared the original version of the document. In addition, if DEQ finalizes the document, it will include a statement on the cover page of the document such as: "DEQ finalized this document because there was a disagreement between DEQ and Respondents and all of DEQ's required changes were not incorporated. Although this document is designated a DEQ version, the author of the original document holds a copyright on the original document, and may have intellectual property rights in all or a portion of this document. Further information regarding the original document submitted by Respondents is available in DEQ's files" or equivalent language.

D. If Respondents disagree with the substantive changes required by DEQ, Respondents may identify their disagreement in a letter that will be included in the site file for the Facility. In addition, if Respondents finalize the Deliverable with DEQ's revisions as provided for in (C) above, Respondents may include the following sentences in a footnote on the cover page of the document: "DEQ has required changes to this document to which Respondents do not agree. See DEQ's files for more information." Respondents may not in any other manner indicate their disagreement with DEQ's required revision in the Deliverable itself. This includes, but is not limited to, the use of highlighting, italicizing, footnoting, and underlining.

47. If Respondents fail to comply with the procedures provided for in Paragraph 46, or if DEQ determines that additional changes or additions were included in a resubmittal without identification, DEQ may complete the Deliverable or any portion thereof and seek reimbursement from Respondent for DEQ Remedial Action Costs. To the extent that DEQ conducts or takes over some of the Work, Respondents shall incorporate and integrate information supplied by DEQ into Deliverables or Work as directed by DEQ, subject to Section XVI (Dispute Resolution).

48. DEQ may also choose to enforce the terms of this AOC in order to require Respondents to produce any Deliverable consistent with the comments and directed changes of DEQ.

49. Neither failure of DEQ to expressly approve or disapprove Respondents' Deliverables within a specified time period, nor the absence of comments, shall be construed as approval by DEQ. DEQ agrees to exercise its best efforts to notify Respondents, in writing,

within 14 Days of receipt of a Deliverable if it will not be able to provide comment or approval of a Deliverable within 30 Days of receipt. DEQ shall also indicate in the written notice when it will provide comment or approval of the Deliverable.

50. Respondents shall not commence any Work unless approved by DEQ in advance and in conformance with the terms of this AOC.

#### IX - FACILITY ACCESS AND INSTITUTIONAL CONTROLS

51. To the extent that Respondents own, operate, control, or otherwise have access rights to any portion of the Facility, they shall provide DEQ, and its representatives, including contractors, with access at all reasonable times to the Facility for the purpose of conducting any activity related to this AOC.

52. Respondents shall use best efforts to secure access to all portions of the Facility as needed to implement the ROD.

53. Notwithstanding any provision of this AOC, DEQ retains all of its access authorities and rights, including enforcement authorities related thereto, under CECRA and any other applicable statutes or regulations.

54. Respondents acknowledge that Institutional Controls are necessary to ensure protection of public health, safety, and welfare. The City agrees that it will implement the permitting provisions found in Sections 9.1 and 11.2.1.2 of the ROD. As successor-in-interest to the contract between the former BSC owner, Red Mountain Retail Group and its successors ("RMRG") and Albertson's, CVS agrees that it will exercise its best efforts to ensure the Institutional Controls identified in the ROD are placed on the real property which is owned or controlled by RMRG in compliance with § 75-10-727, MCA. Respondents thereafter agree to use their best efforts to implement, maintain, enforce, and comply with the Institutional Controls in the future.



## X - ACCESS TO INFORMATION

55. Except as otherwise provided for in Deliverables, Respondents shall provide to DEQ, within 60 Days of DEQ's request, copies of all technical documents and information within their possession or control or that of their contractors or agents relating to activities at the Facility or to the implementation of this AOC not previously provided to DEQ; such technical documents and information include, but are not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, field books, daily logs, receipts, technical reports, sample transport records, correspondence, or other documents or information related to the Work. Unless privileged or otherwise protected from disclosure, Respondents shall also make available to DEQ, for purposes of investigation and enforcement of this AOC, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

56. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Montana law. If Respondents assert such a privilege in lieu of providing documents, they shall provide DEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted. However, no Deliverables created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.

57. With respect to the Facility, no claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other technical documents or information.

## XI - RECORD RETENTION

58. Until five years after Respondents' receipt of DEQ's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall preserve and retain all non-identical copies of technical records and documents (including technical records or documents in electronic form) now in their possession or control or which come into their possession or control that relate to the performance of the Work with respect to the Facility regardless of any City government or corporate retention policy to the contrary, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ. Until five years after Respondents' receipt of DEQ's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all technical documents, records, and other information (including but not limited to field logs, photographs, chain of custody forms, raw data, and manifests) relating to performance of the Work with respect to the Facility, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ.

59. At the conclusion of this technical document retention period, Respondents shall notify DEQ at least 90 Days prior to the destruction of any such technical records or documents, and, upon request by DEQ, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ, Respondents shall deliver any such records or documents to DEQ. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Montana law. If Respondents assert such a privilege, they shall provide DEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or

information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no Deliverables created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.

60. Respondents hereby certify individually that to the best of their knowledge and belief, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to their potential liability regarding the Facility since they received notification of potential liability from DEQ; provided that, with respect to CVS, CVS so certifies since June 2, 2006.

#### XII - COMPLIANCE WITH OTHER LAWS

61. Respondents shall perform all actions required pursuant to this AOC in accordance with all applicable local, state and federal laws and regulations. In accordance with § 75-10-721, MCA, all actions required pursuant to this AOC shall attain applicable or relevant state and federal environmental requirements, criteria or limitations identified in the ROD.

#### XIII - EMERGENCY RESPONSE AND NOTIFICATION

62. In the event of any action or occurrence during performance of the Work that causes or threatens a release from the Facility that constitutes an emergency situation or is likely to present an immediate threat to public health, safety, or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this AOC in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify DEQ's Project Coordinator or, in the event of her unavailability, the Alternate Project Coordinator both telephonically and via electronic mail using the contact information provided in Section VII (Designation of Contractor and Project Coordinators). In

the event that Respondents fail to take appropriate action as required by this paragraph, and DEQ takes such action instead, Respondents shall reimburse DEQ for all costs of the remedial action pursuant to Section XV (Reimbursement of Costs).

63. In addition, in the event of any new release of a hazardous or deleterious substance from the surficial boundaries of the Facility, Respondents or their Contractor(s) shall notify DEQ's Project Coordinator and the National Response Center at (800) 424-8802 within 24 hours after obtaining knowledge of each release. Respondents shall submit a written report to DEQ within seven Days after the notification of each release, setting forth the events that occurred and, in the event such new release were caused by Respondent(s) or anyone acting on its behalf, the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

64. Respondents shall immediately notify DEQ's Project Coordinator orally if Facility conditions within any Work Plan change and shall follow up with written notice to DEQ's Project Coordinator within three Days of such occurrence.

#### XIV - AUTHORITY OF DEQ PROJECT COORDINATOR

65. The DEQ Project Coordinator shall be responsible for overseeing Respondents' implementation of this AOC. The DEQ Project Coordinator shall have all authorities provided in this AOC and CECRA, including the authority, pursuant to the terms of this AOC and upon a reasonable basis, to halt, conduct, or direct any Work required by this AOC, or to direct any other action undertaken at the Facility. Absence of the DEQ Project Coordinator from the

Facility shall not be cause for stoppage of work unless specifically directed by the DEQ Project Coordinator.

#### XV - REIMBURSEMENT OF COSTS

66. Respondents shall reimburse all DEQ Remedial Action Costs. On a monthly basis, DEQ will send Respondents a bill requiring payment that includes a cost summary of direct and indirect costs incurred by the State of Montana and its contractors or subcontractors. Respondents agree to reimburse DEQ within 30 Days of receipt of each accounting that identifies DEQ Remedial Action Costs.

67. Respondents shall make all payments to DEQ by check made payable to DEQ and sent to:

Montana Department of Environmental Quality  
Office of Financial Services  
P.O. Box 200901  
Helena, MT 59620-0901

All payments shall be accompanied by a transmittal letter identifying the name and address of the Party making payment, and shall specify that the payment is to be applied to the Bozeman Solvent Site Facility. Respondents may choose to make payments to DEQ via electronic wire transfer as follows:

Bank Name:	US Bank, NA
Bank ABA # (routing):	092900383
Bank Address:	302 N. Last Chance Gulch, Helena, MT 59601
Account Name:	State of Montana
Account Number:	156041200221
Federal ID Number:	81-0302402
Third Party Information:	On the wire in the description (OBI) field include "53010-DEQ" and "Bozeman Solvent Site, 483725"

All payments received under this Section must be deposited into the Environmental Quality Protection Fund provided for in § 75-10-704, MCA.

68. In the event that payments for DEQ Remedial Action Costs are not made within 30 Days of Respondents' receipt of a bill, interest on the unpaid balance shall accrue in accordance with § 75-10-722, MCA. The interest on DEQ Remedial Action Costs shall begin to accrue on the date the bill is due and shall continue to accrue until the date of payment.

Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to DEQ by virtue of Respondents' failure to make timely payments under this section, including but not limited to, payment of Stipulated Penalties pursuant to Section XVIII.

69. Respondents may, on a line item basis, object to any of the DEQ Remedial Action Costs billed under this Section XV if Respondents believe DEQ has made a mathematical error or believe DEQ incurred costs that are not within the definition of DEQ Remedial Action Costs. Such objection shall be made in writing within 30 Days of receipt of the bill and must be sent to Denise Martin, DEQ Site Response Section Manager. Any such objection shall specifically identify the costs being objected to and the basis for objection. In the event of an objection, Respondents shall within the 30 Day period pay all uncontested DEQ Remedial Action Costs to DEQ in the manner described in this Section XV.

70. As soon as practical but no later than 60 Days after contesting costs, Respondents either shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Montana and remit to that escrow account funds equivalent to the amount of the contested costs or shall provide a guaranty by one of the methods provided for in Section XXV (Financial Assurance) to provide for payment of such contested costs should they become due and owing. Respondents shall send to the DEQ Project Coordinator a copy of the transmittal letter and check paying the uncontested DEQ Remedial Action Costs, and a copy of the correspondence that establishes and funds the escrow account or financial assurance,

including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Concurrently with the establishment of the escrow account or financial assurance, Respondents shall initiate the dispute resolution procedures in Section XVI.

71. If DEQ prevails in the dispute or for any portion thereof, within five Days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest, in accordance with § 75-10-722, MCA) to DEQ in the manner described in this Section XV. If Respondents prevail concerning any aspect of the contested costs, Respondents shall be disbursed any balance of the escrow account along with accrued interest and released from any obligation under any financial assurance herewith provided. The dispute resolution procedures set forth in this paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse DEQ Remedial Action Costs.

#### XVI - DISPUTE RESOLUTION

72. Unless otherwise expressly provided for in this AOC and subject to Paragraph 2, the dispute resolution procedures of this Section XVI shall be Respondents' exclusive mechanism for resolving disputes arising under this AOC.

73. Respondents shall attempt to resolve any disagreements with DEQ concerning implementation of this AOC, including the Work Plan, Work, Schedule, Deliverable or DEQ Remedial Action Costs expeditiously and informally by notifying DEQ's Project Coordinator in writing within 10 Days after Respondents identify the dispute. If the Parties fail to resolve such a dispute informally within 14 Days (the "Negotiation Period") after Respondents have identified the dispute in writing, the Respondents may invoke the dispute resolution procedure in Paragraph 75. The Negotiation Period may be extended at the sole discretion of DEQ.

74. Any agreement reached by the Parties pursuant to Paragraph 73 shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this AOC.

75. If the Parties are unable to reach an agreement within the Negotiation Period, within 10 Days of the expiration of that Negotiation Period, DEQ's determination shall be deemed a final determination and Respondents, in their sole discretion, shall have the opportunity to file for judicial review. Respondents must initiate judicial review within 30 Days of DEQ's final determination. In the event Respondents (or a Respondent) seek judicial review: (i) DEQ shall not file a Mont. R. Civ. Pro. Rule 12(b)(1) motion to dismiss based on subject matter jurisdiction of the court to review and resolve the dispute so long as the petition for judicial review addresses only implementation of the AOC, including the Work Plan, Work, Schedule, Deliverable or DEQ Remedial Action Costs and is not based, in whole or in part, on the Comprehensive Environmental Response, Compensation, and Liability Act or the National Contingency Plan; (ii) Respondents (or a Respondent) shall not base the petition for judicial review, in whole or in part, on a claim that DEQ did not comply with the rulemaking provisions of the Montana Administrative Procedures Act; (iii) venue for such judicial review shall be the First Judicial District Court in Lewis & Clark County, Montana; and (iv) the standard for judicial review shall be whether the Respondents (or a Respondent) have demonstrated, on the administrative record, that DEQ's final determination was arbitrary and capricious or otherwise not in accordance with law.

76. Respondents' remaining obligations under this AOC shall not be tolled by submission of any objection for dispute resolution under this section. Following resolution of



the dispute, as provided by this section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement or decision reached.

77. Failure of Respondents to invoke the Negotiation Period, or proceed with judicial review within the timeframes provided, results in a waiver of the right to request further dispute resolution of that particular dispute.

#### XVII - FORCE MAJEURE

78. Respondents agree to perform all requirements of this AOC according to the Schedule approved by DEQ, as may be modified from time to time, unless the performance is delayed by a force majeure.

79. If any event occurs or has occurred that reasonably may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondents shall notify DEQ orally within 48 hours of when Respondents first knew that the event reasonably might cause a delay. Within three Days thereafter, Respondents shall provide to DEQ in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, safety, or welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

80. Respondents shall bear the burden of proving by a preponderance of the evidence that any failure to comply with the requirements of this AOC or of an approved Work Plan or other Deliverable is due to force majeure.

81. If DEQ agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this AOC that are affected by the force majeure event will be extended by DEQ for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If DEQ does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, DEQ will notify Respondents in writing of DEQ's decision. If DEQ agrees that the delay is attributable to a force majeure event, DEQ will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event, including any extension of time for performance of any other obligations.

#### XVIII - STIPULATED PENALTIES

82. Respondents shall be liable to DEQ for stipulated penalties in the amounts set forth in this Section XVIII for failure to comply with the requirements of this AOC specified below, unless excused under Section XVII (Force Majeure) or otherwise by the DEQ in writing. "Compliance" by Respondents shall include completion of all activities required by this AOC, including but not limited to implementation of the ROD in accordance with all applicable requirements of law and this AOC, within the specified time Schedule, as well as submission of Deliverables within the specified time Schedule, and payment of DEQ Remedial Action Costs as specified in Section XV (Reimbursement of Costs).

83. Stipulated Penalty Amounts

A. In the event that Respondents violate the provisions of this AOC, DEQ may assess, and Respondents shall pay, by tendering to DEQ within 30 Days of Respondents' receipt of a written demand from DEQ for payment of such penalties, the sum set forth below as stipulated penalties for each stipulated penalty event. Stipulated penalties may be assessed for each Day during which such violation, delay, or failure occurs or continues, including weekends or holidays. The demand shall specify the events giving rise to Respondents' asserted liability for stipulated penalties and the amount of such penalties. In evaluating whether to exercise its discretion to impose any such penalties, DEQ shall consider the good faith efforts of the Respondents to comply with their obligations herein.

B. The following stipulated penalties shall accrue per violation per Day for any noncompliance:

<u>Days of Violation</u>	<u>Amount/Day</u>
1-14 Days	\$ 500
15-30 Days	\$ 2,500
31 or more Days	\$ 5,000

C. All penalties shall begin to accrue on the Day after the complete performance is due or the Day a violation occurs, and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. Nothing in this AOC shall prevent the simultaneous accrual of stipulated penalties for separate violations of this AOC. Within three Days of DEQ's determination that Respondents failed to comply with a requirement of this AOC, DEQ shall give Respondents written notification of the failure and describe the

noncompliance. DEQ shall send Respondents a written demand for payment of the penalties. Penalties shall accrue as provided in the preceding paragraph and specifically include any period of time prior to DEQ's written notice to Respondents of the violation, with such period of time not to exceed seven Days. However, if DEQ does not provide written notice to the Respondents within three Days of DEQ's determination that Respondents failed to comply with a requirement of this AOC, penalties will begin to accrue upon the date Respondents receive notice of such noncompliance.

- D. All penalties accruing under this section shall be due and payable to DEQ within 30 Days of Respondents' receipt from DEQ of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to DEQ under this section shall be paid according to the procedures outlined in Section XV (Reimbursement of Costs), and shall indicate that the payment is for stipulated penalties. All penalties recovered under this Section must be deposited into the Environmental Quality Protection Fund as required by § 75-10-704, MCA.
- E. Copies of checks or wire transfers paid pursuant to this section, and accompanying transmittal letters, shall be sent to DEQ's Project Coordinator and to:

Cynthia D. Brooks  
Special Assistant Attorney General  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

- F. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this AOC.
- G. In the event Respondents (or a Respondent) invoke the provisions of Paragraph 73, any penalties shall be stayed either until DEQ and the Respondents reach an agreement (as provided in Paragraph 74) or DEQ has made a final determination (as provided in Paragraph 75). In the event the Respondents (or a Respondent) invoke judicial review (as provided in Paragraph 75) any penalties as to the petitioning Respondent shall be stayed until the district court renders its decision, unless the dispute resolution was initiated by Respondents (or a Respondent) in bad faith or to cause delay. In addition, penalties shall run from the date of the district court's decision during the pendency of any appeal by the Respondents (or a Respondent). Penalties shall be paid within 30 Days after the dispute is resolved by agreement (as provided in Paragraph 74) or by judicial decision. If Respondents (or a Respondent) are successful on appeal and the court reduces the penalties, DEQ shall reimburse the penalties within 30 Days of the judicial decision.
- H. If Respondents fail to pay stipulated penalties when due, DEQ may institute proceedings to collect the penalties, as well as interest. Respondents shall pay interest on the unpaid balance, which shall begin to accrue 30 Days after the date of demand made pursuant to subsection C above. Nothing in this AOC shall be construed as prohibiting, altering, or in any way limiting the ability of DEQ to seek any other remedies or sanctions available by virtue of Respondents' violation of this AOC or of the statutes and regulations upon which it is based; provided,

however, that DEQ shall not seek duplicative penalties for the same violation.

Notwithstanding any other provision of this section, DEQ may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

- I. DEQ hereby finds that the provisions of this AOC, including this Section XVIII, are designed to protect the public health, safety, and welfare and the environment by achieving a prompt, complete and efficient remediation of the Facility. These stipulated penalties provisions are integral and essential to the Parties' desire that the provisions of this AOC be, to the maximum extent achievable, self-executing and self-enforcing.

#### XIX - COVENANT NOT TO SUE BY DEQ

84. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this AOC, and except as otherwise specifically provided in this AOC, DEQ covenants not to sue Respondents to require performance of the Work and payment of DEQ Remedial Action Costs. DEQ also covenants not to sue Respondents for damages for injury to, destruction of, or loss of natural resources and the cost of any natural resource damage assessment relating to the Facility. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this AOC, including, but not limited to, performance of the ROD and payment of DEQ Remedial Action Costs pursuant to Section XV. This covenant not to sue extends only to the Respondents and does not extend to any other person.

#### XX - RESERVATION OF RIGHTS BY DEQ

85. Except as specifically provided in this AOC, nothing in this AOC shall limit the power and authority of DEQ to take, direct, or order all actions necessary to protect public

health, safety, or welfare or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous or deleterious substances at or from the Facility. Further, nothing in this AOC shall prevent DEQ from seeking legal or equitable relief to enforce the terms of this AOC, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CECRA or any other applicable law.

86. Nothing in this AOC precludes DEQ from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not Parties to this AOC. Nothing herein diminishes the right of DEQ to pursue any such persons to obtain additional remedial action costs or remedial action, or to enter into settlements providing contribution protection to such parties, including claims DEQ may have under § 75-10-719(2), MCA.

87. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. DEQ reserves, and this AOC is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- A. Liability for performance of remedial action other than the Work;
- B. Criminal liability;
- C. Liability arising from the past, present, or future disposal, release or threat of release of hazardous or deleterious substances outside of the Facility; and
- D. Liability for violations of state or federal law or regulations.

88. In the event DEQ determines that Respondents have ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in their performance of the

Work, or are implementing the Work in a manner which may cause an endangerment to public health, safety or welfare or the environment, DEQ may assume the performance of all or any portion of the Work as DEQ determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute DEQ's determination that takeover of the Work is warranted under this paragraph. Costs incurred by DEQ in performing the Work pursuant to this paragraph shall be considered DEQ Remedial Action Costs that Respondents shall pay pursuant to Section XV (Reimbursement of Costs). If Respondents fail to pay DEQ's costs incurred pursuant to this paragraph as required by Section XV (Reimbursement of Costs), DEQ may also utilize Respondents' financial assurance contained within Section XXV. Notwithstanding any other provision of this AOC other than Section XVI, DEQ retains all authority and reserves all rights to take any and all remedial actions authorized by law.

#### XXI - COVENANT NOT TO SUE BY RESPONDENTS

89. Other than as set forth in Section XVI, Respondents covenant not to sue and agree not to assert any and all direct or indirect claims or causes of action against the State of Montana, or its departments, agencies, instrumentalities, officials, agents, contractors, subcontractors, employees and representatives, arising out of or related to the Facility, the Work, DEQ Remedial Action Costs, or this AOC, including, but not limited to:

- A. Any claim under federal, state or local statutory or common law;
- B. Any claim, including, but not limited to, contribution claims, motions for joinder and third-party claims, related to any and all lawsuits involving third parties;
- C. Any direct or indirect claim for reimbursement from the Environmental Quality Protection Fund established in § 75-10-704, MCA, the Orphan Share Account established in § 75-10-743, MCA, or any other State of Montana fund;



- D. Claims based on DEQ's oversight of the Work under CECRA, CERCLA, or any other provision of law; and
- E. Claims for damages for injury to, destruction of, or loss of natural resources and the cost of any natural resource damage assessment.

90. Respondents further covenant and agree to use best efforts to protect the integrity of all engineering controls (including but not limited to monitoring wells and soil vapor extraction systems) associated with the remedial actions at the Facility.

#### XXII - OTHER CLAIMS

91. Except as expressly provided in Section XIX (Covenant Not to Sue by DEQ), nothing in this AOC constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a Party to this AOC, for any liability such person may have under CECRA, CERCLA, other statutes, or common law, including but not limited to any claims of DEQ for costs, damages and interest under CECRA.

#### XXIII - CONTRIBUTION

92. The Parties agree that this AOC constitutes an administrative settlement for purposes of § 75-10-719, MCA, and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by § 75-10-719(1), MCA, for "matters addressed" in this AOC. The "matters addressed" in this AOC are the Work and payment of DEQ Remedial Action Costs.

#### XXIV - INDEMNIFICATION

93. By issuance of this AOC, DEQ assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. Respondents shall indemnify, save and hold harmless the State of Montana, its departments, agencies, instrumentalities, officials, agents, contractors, subcontractors, employees and representatives

from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this AOC. This indemnification shall specifically include any joinder of the State of Montana to an action between Respondents and any third party. In addition, Respondents agree to pay the State of Montana all reasonable costs incurred by the State of Montana, including but not limited to reasonable attorneys' fees and other reasonable expenses of litigation and settlement, arising from or on account of claims made against the State of Montana based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under its control, in carrying out activities pursuant to this AOC. The State of Montana shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this AOC. Neither Respondents nor any of their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under its control shall be considered an agent of the State of Montana.

94. The State of Montana shall give Respondents notice of any claim for which the State of Montana plans to seek indemnification pursuant to this section and shall provide an opportunity for Respondents to raise objections thereto prior to settling such claim.

95. Respondents waive all claims against the State of Montana for damages or reimbursement or for set-off of any payments made or to be made to the State of Montana, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold

harmless the State of Montana with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

#### XXV - FINANCIAL ASSURANCE

96. Pursuant to § 75-10-719(9), MCA, within 30 Days of the Effective Date, Respondents shall establish and maintain financial assurance for the benefit of DEQ in the amount of \$531,302. Respondents shall provide financial assurance by any one method or combination of methods, including but not limited to, insurance, guaranty, performance or other surety bond, letter of credit, qualification as a self-insurer, escrow account, or other demonstration of financial capability.

97. This financial assurance is necessary to secure the full and final completion of Work by Respondents, including the long-term operation and maintenance of the Facility, including, but not limited to, in the event of CVS' dissolution or bankruptcy. The financial assurance provided pursuant to this section is in the form, substance and amount satisfactory to DEQ, determined in DEQ's reasonable discretion. In the event that DEQ determines at any time that the financial assurances provided pursuant to this Section XXV (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 60 Days of receipt of notice of DEQ's determination, obtain and present to DEQ additional financial assurance as outlined in Paragraph 96 above. In addition, if at any time DEQ notifies Respondents that the anticipated cost of completing the operation and maintenance actions has increased, then, within 60 Days of such notification, Respondents shall obtain and present to DEQ for approval a revised form of financial assurance (otherwise acceptable under this section) that reflects such cost increase. In the event Respondents are unable to demonstrate

financial ability to complete the Work, Respondents shall notify DEQ of such inability in writing and meet with the DEQ within seven Days of such notice to determine, performance of any remaining activities required under this AOC.

98. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining operation and maintenance actions has diminished below the amount set forth in Paragraphs 96, as may be increased by Paragraph 97, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, propose a reduction in the amount of the financial assurance provided under this section to the estimated cost of the remaining operation and maintenance actions to be performed. Respondents shall submit a proposal for such reduction to DEQ, in accordance with the requirements of this section, and may reduce the amount of the financial assurance after receiving written approval from DEQ. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondents may reduce the amount of financial assurance in accordance with the written agreement of DEQ or any judicial decision resolving the dispute.

#### XXVI - MODIFICATIONS

99. The DEQ Project Coordinator may make modifications to any Deliverable or Schedule in writing or by oral direction subject to the provisions of Section XVI (Dispute Resolution). Any oral modification is not binding until it is promptly memorialized in writing by DEQ but shall have as its effective date the date of the DEQ Project Coordinator's oral direction. Any other requirements of this AOC may be modified in writing by mutual agreement of the Parties.

100. If Respondents seek permission to deviate from any approved Deliverable or Schedule, Respondents' Project Coordinator shall submit a written request to DEQ for approval outlining the proposed modification and its basis. The written request may be made to DEQ via

electronic mail to the DEQ Project Coordinator. Respondents may not proceed with the requested deviation until receiving written approval from the DEQ Project Coordinator.

101. No informal advice, guidance, suggestion, or comment by the DEQ Project Coordinator or other DEQ representatives regarding a Deliverable, Schedule, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this AOC, or to comply with all requirements of this AOC, unless it is formally modified.

#### XXVII - ADDITIONAL WORK

102. If DEQ determines that additional remedial actions not addressed in the ROD are necessary to protect public health, welfare, or safety, or the environment, DEQ will notify Respondents of that determination. Unless otherwise stated by DEQ, within 60 Days of receipt of notice from DEQ that additional remedial actions are necessary to protect public health, welfare, or safety, or the environment, Respondents shall submit a Work Plan for the additional remedial actions to DEQ for approval, subject to the provisions of Section VIII. The Work Plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this AOC. Upon DEQ's approval of the Work Plan pursuant to Section VIII, the plan shall become incorporated into this AOC. DEQ shall be responsible for determining whether and in what format any modifications or amendments to the ROD are necessary to address the additional remedial actions. Respondents shall implement the Work Plan for additional remedial actions in accordance with the provisions and Schedule contained therein. This section does not alter or diminish the DEQ Project Coordinator's authority to make modifications to any Deliverable or Schedule pursuant to Section XXVI (Modifications) subject to the provisions of Section XVI (Dispute Resolution).

#### XXVIII - NOTICE OF COMPLETION OF WORK

103. When DEQ determines that all Work has been fully performed in accordance with this AOC, with the exception of any continuing obligations required by this AOC, including payment of DEQ Remedial Action Costs, and record retention under Section XI, DEQ will provide written notice to Respondents.

104. If DEQ determines that any such Work has not been completed in accordance with this AOC, DEQ will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies within a defined period of time. Subject to the provisions of Section XVI, failure by Respondents to correct the deficiencies within the defined period of time shall be a violation of this AOC, subject to stipulated penalties.

#### XXIX - INTEGRATION/APPENDICES

105. This AOC and Attachment A constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this AOC. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this AOC.

#### XXX - TERMINATION AND SATISFACTION

106. This AOC shall terminate when Respondents certify that all activities required under this AOC have been performed (the "Certification"), and DEQ has Approved the Certification. DEQ shall approve or disapprove the Certification within six months of Respondents' submittal of the Certification. Sections I.2 (Jurisdiction and General Matters), XI (Record Retention), XV (Reimbursement of Costs), XIX (Covenant Not to Sue by DEQ), XX (Reservation of Rights by DEQ), XXI (Covenant Not to Sue by Respondents), XXII (Other Claims), XXIII (Contribution), XXIV (Indemnification), XXX (Termination and Satisfaction), and XXXI (Admissibility of Data) shall survive termination of this AOC. If DEQ approves the

Certification, Respondents shall not be liable for any additional remedial actions at the Facility, except, if, subsequent to the Certification,

- A. Conditions at the Facility, previously unknown to DEQ, are discovered, or
- B. New information about the Facility is received by DEQ and indicates that the remedial action is not adequate to protect the public health, welfare or safety, or the environment.

#### XXXI - ADMISSIBILITY OF DATA

107. Except as provided herein, Respondents hereby stipulate to the admissibility of any Deliverables prepared by and submitted to DEQ by Respondents or their contractors pursuant to this AOC in any judicial or administrative proceedings brought by DEQ and arising out of or related to the subject matter of this AOC.

#### XXXII - EFFECTIVE DATE

108. This AOC shall become effective after the AOC is signed by DEQ following the notice and public comment period referenced in Section XXXIV.

#### XXXIII - AUTHORITY OF SIGNATORIES

109. Each of the signatories of this AOC states that he or she is fully authorized to enter into the terms and conditions of this AOC and to bind legally the Party represented by him or her to the AOC.

#### XXXIV - PUBLIC NOTICE AND COMMENT

110. After signature by Respondents but before final approval and signature by DEQ, DEQ shall make this AOC available for public comment as required by § 75-10-723(2), MCA, and in accordance with § 75-10-713, MCA.

111. After completion of the notice and comment period described in Paragraph 110, DEQ may withdraw or withhold consent to this AOC or may request changes to the AOC based

on the comment received. If DEQ requests changes, Respondents may elect to withdraw their consent. Otherwise, Respondents consent to this AOC without further notice.

IT IS SO AGREED:

STATE OF MONTANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY

\_\_\_\_\_  
Richard H. Opper, Director

\_\_\_\_\_  
Date



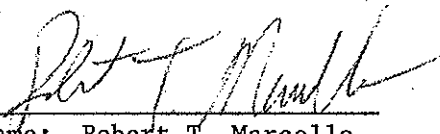
CITY OF BOZEMAN

Chris A. Kuhlshci

12-5-11

Date

CVS PHARMACY, INC.

  
Name: Robert T. Marcello  
Title: Vice President

12/2/11  
Date